electronically must include a color reproduction of the mark.

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■ 25. Revise § 7.23(a)(5) and (6) to read as follows:

**§ 7.23 Requests for recording assignments at the International Bureau.**

* * * * *

(a) * * *

(5) A statement that, after a good faith effort, the assignee could not obtain the assignor's signature for the request to record the assignment, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter;

(6) An indication that the assignment applies to the designation to the United States or an international registration that is based on a U.S. application or registration;

* * * * *

■ 26. Revise § 7.24(b)(5)(ii) and (b)(7) to read as follows:

**§ 7.24 Requests to record security interest or other restriction of holder's rights of disposal or release of such restriction submitted through the Office.**

* * * * *

(b) * * *

(5) * * *

(ii) Where the restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, a statement that after a good faith effort, the signature of the holder of the international registration could not be obtained for the request to record the restriction, or release of the restriction, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter;

* * * * *

(7) An indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the United States or an international registration that is based on a U.S. application or registration; and

* * * * *

■ 27. Revise § 7.25(a) to read as follows:

**§ 7.25 Sections of part 2 applicable to extension of protection.**

(a) Except for §§ 2.21–2.23, 2.76, 2.88, 2.89, 2.130–2.131, 2.160–2.166, 2.168, 2.173, 2.175, 2.181–2.186 and 2.197, all sections in part 2 and all sections in part 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

■ 28. Amend § 7.31 by revising the introductory text and paragraphs (a)(3) and (a)(4), and adding new paragraph (a)(5) to read as follows:

**§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.**

If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the goods and/or services to which the cancellation applies in the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(a) * * *

(3) Identify the goods and/or services to be transformed, if other than all the goods and/or services that have been cancelled;

(4) The application filing fee for at least one class of goods or services required by § 2.6(a)(1) of this chapter; and

(5) An email address for receipt of correspondence from the Office.

* * * * *

Dated: January 15, 2014.

**Michelle K. Lee,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, United States Patent and Trademark Office.*

[FR Doc. 2014–01126 Filed 1–22–14; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2012–0893; FRL–9905–11–Region 4]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia; Redesignation of the Rome, Georgia 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 21, 2012, the Georgia Department of Natural Resources, through Georgia Environmental Protection Division (GA EPD), submitted a request to redesignate the Rome, Georgia, fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Rome Area'' or ''Area'') to attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) and to approve a state implementation plan (SIP) revision containing a maintenance plan for the Rome Area. The Rome Area is comprised of Floyd County in Georgia. EPA is proposing to approve the redesignation request and the related SIP revision for the Rome Area, including GA EPD's plan for maintaining attainment of the $PM_{2.5}$ standard in the Area. EPA is also proposing to approve into the Georgia SIP, the motor vehicle emission budgets (MVEBs) for nitrogen oxides ($NO_x$) and $PM_{2.5}$ for the year 2023 for the Rome Area that are included as part of Georgia's maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before February 24, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0893, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email: R4–RDS@epa.gov*.

3. *Fax:* (404) 562–9019.

4. *Mail:* EPA–R04–OAR–2012–0893, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2012–0893. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder or Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joydeb Majumder may be reached by phone at (404) 562–9121, or via electronic mail at *majumder.joydeb@epa.gov*. Joel Huey may be reached by phone at (404) 562–9104.

**SUPPLEMENTARY INFORMATION:**

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## I. What are the actions EPA is proposing to take?

In this action, EPA is proposing to make a determination that Rome Area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS [1] and to take additional actions related to Georgia's request to redesignate the Rome Area, which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; and (2) to approve, under section 175A of the Clean Air Act (CAA or Act), Georgia's 1997 annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs, for the Rome Area into the Georgia SIP.

First, EPA proposes to determine that the Rome Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Floyd County from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

Second, EPA is proposing to approve Georgia's 1997 annual $PM_{2.5}$ NAAQS maintenance plan for the Rome Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Rome Area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2023. As explained in Section V, EPA is also proposing to approve that attainment can be maintained through 2024. The maintenance plan that EPA is proposing to approve today includes on-road MVEBs for the mobile source contribution of direct $PM_{2.5}$ and $NO_X$ to the air quality problem in the Rome Area for transportation conformity purposes. EPA is proposing to approve (into the Georgia SIP) the 2023 MVEBs that are included as part of Georgia's maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS.

Further, EPA proposes to make the determination that the Rome Area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Rome Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also notifying the public of an update of the status of EPA's adequacy process for the 2023 direct MVEBs for $PM_{2.5}$ and $NO_X$ for the Rome Area. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details.

Today's notice of proposed rulemaking is in response to Georgia's June 21, 2012, SIP submittal, which requests redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS and addresses the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

## II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary $PM_{2.5}$ are sulfur dioxide ($SO_2$), $NO_X$, ammonia, and volatile organic compounds (VOC). *See, e.g.,* 72 FR 20586 at 20589. Sulfates are a type of secondary particle formed from $SO_2$ emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from $NO_X$ emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the 3-year average of the 98th percentile of

[1] In notices published on April 5, 2011, at 76 FR 18650, and on September 8, 2011, at 76 FR 55776, EPA determined that the Rome Area had attained the 1997 Annual $PM_{2.5}$ NAAQS and that the Area had done so by its applicable attainment date of April 5, 2010.

24-hour concentrations.[2] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Rome Area as nonattainment for the 1997 $PM_{2.5}$ NAAQS. In that action, EPA defined the 1997 $PM_{2.5}$ Rome Area to include Floyd County in Georgia. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Rome Area as attainment for that NAAQS. That action clarified that the Rome Area was classified unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS. EPA did not promulgate designations for the 2006 annual $PM_{2.5}$ NAAQS because that NAAQS was essentially identical to the 1997 annual $PM_{2.5}$ NAAQS, and today's action only addresses this designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20586, EPA promulgated its Clean Air Fine Particle Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ annual NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory results of attaining the NAAQS, as discussed below. The DC Circuit remanded the Clean Air Fine Particle Implementation Rule and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule'') to EPA on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). The court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I. The effect of the court's ruling on this proposed redesignation action is discussed in detail in Section VI of this notice.

The 3-year ambient air quality data for 2007–2009 indicated no violations of the 1997 $PM_{2.5}$ annual NAAQS for the Rome Area. As a result, on June 21, 2012, Georgia requested redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The redesignation request includes three years of complete, quality-assured ambient air quality data for the 1997 annual $PM_{2.5}$ NAAQS for 2007–2009, indicating that the 1997 $PM_{2.5}$ NAAQS had been achieved for the entire Rome Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The Rome Area design value based on data from 2007 through 2009 is 13.3 $\mu g/m^3$, which demonstrates attainment of the standard. While annual $PM_{2.5}$ concentrations are dependent on a variety of conditions, the overall improvement in annual $PM_{2.5}$ concentrations in the Rome Area can be attributed to the reduction of pollutant emissions, as discussed in more detail in section V of this proposed rulemaking.

## III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');

2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

4. ''Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule,'' Memorandum from Gina McCarthy, Assistant Administrator, November 19, 2012.

## IV. Why is EPA proposing these actions?

On June 21, 2012, GA EPD requested the redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS, and EPA's preliminary evaluation indicates that the Area has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination for the direct $PM_{2.5}$ and $NO_X$ MVEBs for the Rome Area.

## V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; and (2) approve into the Georgia SIP the 1997 annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs, for the Rome Area. Further, EPA proposes to make the determination that the Rome Area

[2] In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) remanded that NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of he remanded 2006 annual NAAQS.

continues to attain the 1997 annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Rome Area. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

*Criteria (1)—The Rome Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS since the September 8, 2011, attainment determination. For $PM_{2.5}$, an area may be considered to be attaining the 1997 annual $PM_{2.5}$ if it meets the 1997 annual $PM_{2.5}$ NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, must be less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On April 5, 2011, at 76 FR 18650, EPA determined that the Rome Area was attaining the 1997 annual $PM_{2.5}$ NAAQS. For that action EPA reviewed $PM_{2.5}$ monitoring data from monitoring station in the Rome Area for the 1997 annual $PM_{2.5}$ NAAQS for 2007–2009. These data have been quality-assured and are recorded in AQS. On September 8, 2011, at 76 FR 55774, EPA also finalized a determination that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. EPA has reviewed more recent data, which indicates that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. The most recent year available with complete, quality-assured and certified ambient air monitoring is 2012, during which the Area recorded an annual average $PM_{2.5}$ concentration of 10.6 $\mu g/m^3$. EPA has also reviewed the available data in AQS for 2013 which, although not yet complete or certified, indicates the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. As summarized in Table 1 below, the 3-year average of annual arithmetic mean concentrations (i.e., design values) for the years 2009, 2010, 2011, and 2012 for the Rome Area are below the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE ROME AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS ($\mu g/m^3$)

| Location | County | Site ID | 3-Year design values | | | |
|---|---|---|---|---|---|---|
| | | | 2007–2009 | 2008–2010 | 2009–2011 | 2010–2012 |
| Rome-Coosa Elementary School ..... | Floyd ..... | 13–115–0003 | 13.3 | 12.5 | 12.4 | 12.1 |

As discussed above, the design value for an area is the highest 3-year average annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year design value for the period on which Georgia based its redesignation request (2007–2009) for the Rome Area is 13.3 $\mu g/m^3$, which meets the NAAQS as described above. Additional details can be found in EPA's final clean data determination for the Rome Area (76 FR 18650, April 5, 2011). EPA has reviewed more recent data which indicate that the Rome Area continues to attain the 1997 $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. If the Area does not continue to attain before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, GA EPD has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

*Criteria (5)—Georgia Has Met All Applicable Requirements Under Section 110 and Part D of the CAA; and Criteria (2)—Georgia Has a Fully Approved SIP Under Section 110(k) for the Rome Area*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Georgia has met all applicable SIP requirements for the Rome Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Georgia SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 annual $PM_{2.5}$ nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Rome Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (Nonattainment New Source Review (NNSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation

in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

On June 15, 2012 (77 FR 35909) and February 20, 2013 (78 FR 11805), EPA proposed approval on a submittal from Georgia, addressing ''infrastructure SIP'' elements required under the CAA section 110(a)(2) for the 1997 annual $PM_{2.5}$ NAAQS.[3] However, these are statewide requirements that are not a consequence of the nonattainment status of the Rome Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on Georgia's submittal for the $PM_{2.5}$ infrastructure SIP elements of section 110(a)(2), EPA believes that it has approved all SIP elements that must be approved as a prerequisite for redesignating the Rome Area to attainment.

*Title I, Part D, subpart 1 applicable SIP requirements.* EPA proposes to determine that the Georgia SIP meets the applicable SIP requirements for the Rome Area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS were designated under subpart 1 of the CAA. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992). Section VI of this proposed rulemaking notice discusses the relationship between this proposed redesignation action and subpart 4 of Part D.

*Subpart 1 Section 172 Requirements.* Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Rome Area is attaining the annual $PM_{2.5}$ standard suspended Georgia's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Georgia's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of the section 172 requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard.

Because attainment has been reached in the Rome Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. *See* also 40 CFR 51.1004(c).

Pursuant to section 172(c)(2), nonattainment plans must contain provisions that require reasonable further progress toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Rome Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004(c). In addition, because the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. On January 12, 2012, EPA approved Georgia's 2002 base-year emissions inventory for the Rome Area as part of the SIP revision submitted by GA EPD to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the Area. *See* 77 FR 1873. No comments, adverse or otherwise, were received on EPA's

[3] The June 15, 2012 proposed approval (77 FR 35909) addressed all infrastructure SIP elements required under section 110(a)(2) for the 1997 annual $PM_{2.5}$ NAAQS with the exception of the visibility element under section 110(a)(2)(D)(i)(II) (also known as ''prong 4''). EPA finalized the June 15, 2012 proposed action on October 25, 2012 (77 FR 65125). EPA proposed approval of prong 4 for the 1997 annual $PM_{2.5}$ NAAQS on February 20, 2013 (78 FR 11805) but has not yet taken final action on this element.

proposed approval of the emissions inventory for the Rome Area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Georgia has demonstrated that the Rome Area will be able to maintain the NAAQS without part D NSR in effect, and therefore, Georgia need not have fully approved part D NSR programs prior to approval of the redesignation request. Georgia's PSD program will become effective in the Rome Area upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Georgia SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

*176 Conformity Requirements.* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes that it is reasonable to interpret the conformity SIP requirements [4] as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (upholding this interpretation) (6th Cir. 2001); see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Rome Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Rome Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the Rome Area for the 1997 annual $PM_{2.5}$ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area (e.g., 77 FR 35909, June 15, 2012).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). EPA has previously approved all part D subpart 1 requirements applicable for purposes of this redesignation. See Section VI of this notice for a discussion of the relationship between part D subpart 4 and this action.

*Criteria (3)—The Air Quality Improvement in the Rome Area 1997 Annual $PM_{2.5}$ NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanentF and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes that Georgia has demonstrated that the observed air quality improvement in the Rome Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

Fine particulate matter, or $PM_{2.5}$, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. In the Rome Area, one of the largest components of $PM_{2.5}$ is sulfate, which is formed through various chemical reactions from the precursor $SO_2$. The other major component of $PM_{2.5}$ is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor $NO_X$, is also a component of $PM_{2.5}$. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total $PM_{2.5}$.

State and federal measures enacted in recent years have resulted in permanent emission reductions in particulate matter and its precursors. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The federal measures that have been implemented include:

*Tier 2 vehicle standards and low-sulfur gasoline.* In addition to requiring $NO_X$ controls, the Tier 2 rule reduced the allowable sulfur content of gasoline

[4] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold prior to this had a sulfur content of approximately 300 ppm.

*Heavy-duty gasoline and diesel highway vehicle standards & Ultra Low-Sulfur Diesel Rule.* On October 6, 2000, the U.S. EPA promulgated a rule to reduce $NO_X$ and VOC emissions from heavy-duty gasoline and diesel highway vehicles that began to take effect in 2004. 65 FR 59896. A second phase of standards and testing procedures began in 2007 to reduce particulate matter from heavy-duty highway engines, and reduce highway diesel fuel sulfur content to 15 ppm since the sulfur in fuel damages high efficiency catalytic exhaust emission control devices. The total program should achieve a 90 percent reduction PM emissions and a 95 percent reduction in $NO_X$ emission for new engines using low-sulfur diesel, compared to existing engines using higher-content sulfur diesel.

*Nonroad Large spark-ignition engines and recreational engines standards.* The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate $NO_X$, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (e.g., forklifts and airport ground service equipment), recreational vehicles (e.g., off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards.

When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in $NO_X$, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls will help reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

*Large nonroad diesel engine standards.* Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce $NO_X$ and direct $PM_{2.5}$ emissions by over 90 percent from these engines.

*Reciprocating Internal Combustion Engine Standard.* Promulgated in 2010, this rule regulates emissions of air toxics from existing diesel powered stationary reciprocating internal combustion engines that meet specific site rating, age, and size criteria. When all of the reciprocating internal combustion engine standards are fully implemented in 2013, EPA estimates that $PM_{2.5}$ emissions from these engines will be reduced by approximately 2,800 tons per year (tpy).

*Category 3 Marine Diesel Engine Standards.* Promulgated in 2010, this rule establishes more stringent exhaust emission standards for new large marine diesel engines with per cylinder displacement at or above 30 liters (commonly referred to as Category 3 compression-ignition marine engines) as part of a coordinated strategy to address emissions from all ships that effect U.S. air quality. Near-term standards for newly built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in $NO_X$ emissions will begin in 2016.

*$NO_X$ SIP Call.* On October 27, 1998 (63 FR 57356), EPA issued a $NO_X$ SIP Call requiring the District of Columbia and 22 states to reduce emissions of $NO_X$. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the $NO_X$ SIP Call are permanent and enforceable.

*CAIR and CSAPR.* EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate (CAIR), which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of $SO_2$ and $NO_X$ from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The DC Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the DC Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending . . . development of a valid replacement.'' *EME Homer City,* 696 F.3d at 38. The DC Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court on March 29, 2013, to review the DC Circuit's decision in *EME Homer City,* and on June 24, 2013, the U.S. Supreme Court granted the United States' petition asking the Court to review the DC Circuit's decision on CSAPR. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

In light of these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for Floyd County in Georgia, including Georgia's plan for maintaining attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area. To the extent that attainment is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. The air quality modeling analysis conducted for CSAPR demonstrates that the Rome Area would be able to maintain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of either CAIR or CSAPR. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–39. This modeling is available in the docket for this proposed redesignation action. Nothing in the DC Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, as directed by the DC Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. EPA approved a modification to Georgia's SIP on October 9, 2007, that addressed the requirements of CAIR for the purpose of reducing $SO_2$ and $NO_X$ emissions (*see* 72 FR 57202), and Georgia's SIP redesignation request lists CAIR as a control measure. CAIR was thus in place and getting emission reductions when the Rome area began monitoring attainment of the 1997 Annual $PM_{2.5}$ NAAQS. The quality-assured, certified monitoring data used to demonstrate the area's attainment of the 1997 Annual $PM_{2.5}$ NAAQS by the April 5, 2010 attainment deadline was also impacted by CAIR.

To the extent that Georgia is relying on CAIR in its maintenance plan, the recent directive from the DC Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been

ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the DC Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

*Criteria (4)—The Rome Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, GA EPD submitted a SIP revision to provide for the maintenance of the 1997 annual $PM_{2.5}$ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, GA EPD must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, as EPA deems necessary, to assure prompt correction of any future 1997 annual $PM_{2.5}$ NAAQS violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed below, EPA finds that GA EPD's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Georgia SIP.

b. Attainment Emissions Inventory

The Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period from 2007–2009. GA EPD has selected 2007 as the attainment emission inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 annual $PM_{2.5}$ NAAQS. GA EPD began development of the attainment inventory by first generating a baseline emissions inventory for the Rome Area. As noted above, the year 2007 was chosen as the base year for developing a comprehensive emissions inventory for direct $PM_{2.5}$ and the $PM_{2.5}$ precursors $SO_2$ and $NO_X$. Emissions projections to support maintenance through 2023 have been prepared for the years 2017 and 2023. In addition, emissions have been calculated by interpolation for the years 2014 and 2020. The projected inventory included with the maintenance plan estimates emissions forward to 2023, which is at the 10-year interval required in section 175(A) of the CAA.

The emissions inventories are composed of four major types of sources: point, area, on-road mobile and non-road mobile. The 2007 inventory, with the exception of on-road emissions, was prepared for Georgia by the contractor for the Southeastern Modeling, Analysis, and Planning (SEMAP) project. Under the SEMAP project, emissions estimates are reported by county and source classification code (SCC). The SEMAP emissions inventories were developed using data from a number of sources, including state and local agencies and EPA's National Emissions Inventory (NEI). GA EPD utilized the State's own resources to develop the 2007 inventory of on-road mobile emissions.

The 2007 $SO_2$, NOx and $PM_{2.5}$ emissions for the Rome Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 2, 3, 4, 5, and 6 of the following subsection discussing the maintenance demonstration.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the Area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the subsection below, Georgia's maintenance plan submission expressly documents that the Area's emissions inventories will remain below the attainment year inventories through 2023. Projected emissions inventory levels in 2023 are well below the attainment year inventory levels, and it is highly improbable that they will suddenly increase and exceed attainment year inventory levels in 2024. In addition, for the reasons set forth below, EPA believes that the Georgia's submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through 2024.

Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2014, the approval will be based upon this showing, in accordance with section 175A, and EPA's analysis described herein, that the Georgia's maintenance plan provides for maintenance for at least ten years after redesignation.

c. Maintenance Demonstration

The June 21, 2012, final submittal includes a maintenance plan for the Rome Area. This demonstration:

(i) Shows compliance with and maintenance of the annual $PM_{2.5}$ standard by providing information to support the demonstration that current and future emissions of $SO_2$, $NO_X$ and $PM_{2.5}$ remain at or below 2007 emissions levels.

(ii) Uses 2007 as the attainment year and includes future emission inventory projections for 2017 and 2023.

(iii) Identifies an ''out year'' at least 10 years after EPA review and potential approval of the maintenance plan. Per 40 CFR part 93, $NO_X$ and $PM_{2.5}$ MVEBs were established for the last year (2023) of the maintenance plan.

(iv) Provides, as shown in Tables 2, 3, 4, 5, and 6 below, the actual and projected missions inventories, in tpy, for the Rome Area.

TABLE 2—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) POINT SOURCE EMISSIONS FOR THE ROME AREA

[tons]

| Pollutant | 2007 | 2014 | 2017 | 2020 | 2023 |
|---|---|---|---|---|---|
| $SO_2$ | 24,275 | 19,666 | 6,119 | 6,242 | 6,366 |
| $NO_X$ | 10,165 | 8,267 | 7,453 | 7,660 | 7,866 |
| $PM_{2.5}$ | 953 | 774 | 697 | 722 | 747 |

TABLE 3—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) NONPOINT SOURCES EMISSIONS FOR THE ROME AREA

[tons]

| Pollutant | 2007 | 2014 | 2017 | 2020 | 2023 |
|---|---|---|---|---|---|
| $SO_2$ | 758 | 784 | 794 | 807 | 819 |
| $NO_X$ | 936 | 1,026 | 1,066 | 1,104 | 1,144 |
| $PM_{2.5}$ | 1,855 | 2,072 | 2,164 | 2,249 | 2,333 |

TABLE 4—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) ONROAD MOBILE SOURCES EMISSIONS FOR THE ROME AREA

[tons]

| Pollutant | 2007 | 2014 | 2017 | 2020 | 2023 |
|---|---|---|---|---|---|
| $SO_2$ | 14.1 | 11.6 | 10.5 | 9.4 | 8.3 |
| $NO_X$ | 3,378.3 | 2,270.9 | 1,796.2 | 1,321.6 | 847.0 |
| $PM_{2.5}$ | 117.3 | 79.9 | 63.9 | 47.8 | 31.8 |

TABLE 5—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) NONROAD MOBILE SOURCE EMISSIONS FOR THE ROME AREA

[tons]

| Pollutant | 2007 | 2014 | 2017 | 2020 | 2023 |
|---|---|---|---|---|---|
| $SO_2$ | 29 | 9 | 1 | 1 | 1 |
| $NO_X$ | 996 | 728 | 613 | 546 | 479 |
| $PM_{2.5}$ | 66 | 48 | 40 | 36 | 31 |

TABLE 6—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) EMISSIONS FOR ALL SECTORS FOR THE ROME AREA

[tons]

| Pollutant | 2007 | 2014 | 2017 | 2020 | 2023 | Change 2007–2023 |
|---|---|---|---|---|---|---|
| $SO_2$ | 25,276.1 | 20,470.6 | 6,924.5 | 7,059.4 | 7,194.3 | 72% decrease. |
| $NO_X$ | 15,475.3 | 12,291.9 | 10,928.2 | 10,631.6 | 10,336.0 | 33% decrease. |
| $PM_{2.5}$ | 2,991.3 | 2,973.9 | 2,964.9 | 3,054.8 | 3,142.8 | 5% increase. |

The State's submittal credits Georgia Rule 391–3–1–.02(2)(sss) as requiring flue gas desulfurization (FGD) and selective catalytic reduction (SCR) controls on the majority of coal-fired EGUs in the State. The submittal also credits Georgia Rule 391–3–1–.02(2)(uuu) as requiring a 95 percent reduction in $SO_2$ emissions from the majority of Georgia's coal-fired EGUs, with the requirement being phased in from 2010 through 2016. Within the Rome Area, this rule requires a 95 percent reduction of $SO_2$ emissions from all four EGUs at plant Hammond, which is being phased in on individual units between 2011 and 2015. The rule also requires $SO_2$ emission reductions from other coal-fired EGUs in north Georgia.

EPA has not approved Georgia Rules 391–3–1–.02(2)(sss) and 391–3–1–.02(2)(uuu) into Georgia's SIP, and therefore, these rules are not federally enforceable. However, CAIR was one measure that led to air quality improvement in the Rome Area. As discussed above, EPA is interpreting CAA section 107(d)(3)(E)(iii)'s requirement that emission reductions be due to permanent and federally enforceable measures to include CAIR, because of the D.C. Circuit's directive to leave CAIR in place until it is replaced by a new rule. Although modeling completed as part of the CSAPR rulemaking showed that the Area would continue to maintain the standard even in the absence of CAIR or CSAPR, to the extent that the Area's maintenance of the standard relies on CAIR, EPA is proposing to find CAIR may be relied upon under CAA section 175A as well. Unlike the state-only rules discussed above, CAIR was approved into Georgia's SIP. Although the state-only rules have more specific unit control requirements than the provisions of CAIR, the State implemented them in response to CAIR and they require emissions reductions in $NO_X$ and $SO_2$ consistent with CAIR's original schedule starting in 2009. Since the controls are already in the process of being installed to comply with both CAIR and the state rules, EPA regards the emission estimates based on the installation and operation of these controls to be both an accurate projection of how CAIR will continue to be implemented in the Rome Area and an appropriate basis upon which to project the emission inventory.

As reflected in Table 6, future emissions for the relevant pollutants and precursors are expected to be below the ''attainment level'' emissions in 2007, thus illustrating that the Macon Area is expected to continue to attain the 1997 annual $PM_{2.5}$ NAAQS through 2023. In situations such as this where local emissions are the primary contributor to nonattainment, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the 1997 annual $PM_{2.5}$ NAAQS should not be violated in the future.

A maintenance plan requires the state to show that projected future year emissions will not exceed the level of emissions which led the Area to attain the NAAQS. Georgia has projected emissions as described previously and determined that emissions in the Macon Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As noted above, EPA believes that several pertinent factors demonstrate that the Rome Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through the year 2023. These include the circumstances that (1) all of the state and federal regulatory requirements that enabled the Area to attain the NAAQS will continue to be in effect and enforceable after the 10-year maintenance period; (2) the most recent complete, quality-assured and certified annual $PM_{2.5}$ design value (for the period 2009 to 2011) for the Area of 13.3 $\mu g/m^3$ is well below the standard of 15.0 $\mu g/m^3$; (3) as discussed in detail below, EPA is proposing in this action to approve Georgia's determination that the direct $PM_{2.5}$ and $NO_X$ contribution from motor vehicle emissions for the Area and thus does not expect such emissions to contribute significantly to future ambient $PM_{2.5}$ levels; and (4) as noted above, several of the largest sources in the Area have been required by permanent and enforceable consent decrees to install controls that achieve reductions in $SO_2$ and $NO_X$ emissions as well as reductions in direct $PM_{2.5}$ emissions. Therefore, EPA expects the projected downward trend in pollutant emissions in the Rome Area from the 2007 attainment year through the 2023 maintenance year, as shown in Table 6 above, to continue for at least the one additional year past 2024.

d. Monitoring Network

There is currently one monitor measuring $PM_{2.5}$ in the Rome Area (Rome-Coosa Elementary School in Floyd County). GA EPD has committed to continue operation of the monitor in the Rome Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Georgia's 2012 monitoring plan on October 16, 2012.

e. Verification of Continued Attainment

GA EPD has the legal authority to enforce and implement the requirements of the Rome Area 1997 annual $PM_{2.5}$ maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

GA EPD will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Rome Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, GA EPD will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then GA EPD will re-project emissions for the Rome Area.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by GA EPD. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. GA EPD will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

Georgia has identified a Tier I trigger as occurring when any of the following conditions occurs, as described in the State's submittal for the Rome Area.

- The previous calendar year's annual mean $PM_{2.5}$ concentration exceeds the standard by 1.5 $\mu g/m^3$ or more;
- The annual mean $PM_{2.5}$ concentration in each of the previous

two consecutive calendar years exceeds the standard by 0.5 ug/m$^3$ or more;

- The total maintenance area $SO_2$ emissions in the most recent NEI exceeds the corresponding attainment-year inventory by more than 10.0 percent;
- The total maintenance area $PM_{2.5}$ emissions in the most recent NEI exceeds the corresponding attainment-year inventory by more than 30.0 percent.

GA EPD will evaluate a Tier I condition, if it occurs, as expeditiously as practicable to determine the causes of the ambient $PM_{2.5}$ or emissions inventory increase and to determine if a Tier II condition is likely to occur. A Tier II trigger will be activated when any violation of the annual $PM_{2.5}$ NAAQS at any federal reference method monitor in the Rome maintenance area is recorded, based on quality-assured monitoring data. In this event, GA EPD will conduct a comprehensive study to determine the cause of the ambient $PM_{2.5}$ increase and to determine if the increase is likely to continue and will implement any required measures as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures.

The comprehensive study will be completed and submitted to EPA as expeditiously as practical but no later than nine months after the Tier I or Tier II trigger is activated, and the appropriate corrective measures will be adopted and implemented within 18 to 24 months after the trigger occurs. If the study determines that additional measures are required, the State will adopt rules no later than 18 months following the date that the trigger is activated.[5] The comprehensive measures will be selected from the following types of measures or from any other measure deemed appropriate and effective at the time the selection is made by GA EPD:

- RACM for sources of $SO_2$ and $PM_{2.5}$;
- Reasonably Available Control Technologies (RACT) for point sources of $SO_2$ and $PM_{2.5}$;
- Expansion of RACM/RACT to areas of transport within the State;
- Mobile source measures; and
- Additional $SO_2$ and/or $PM_{2.5}$ reduction measures yet to be identified.

In addition to the triggers indicated above, Georgia will monitor regional emissions through the CERR and AERR, and compare them to the projected inventories and the attainment year inventory. In the June 21, 2012, submittal, the State acknowledges that the contingency plan requires the implementation of all measures contained in the SIP for the Area prior to redesignation. The State also notes that these measures are currently in effect and may be evaluated by the State to determine if they are adequate or up-to-date.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment emission inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by GA EPD for the Rome Area meets the requirements of section 175A of the CAA and is approvable.

## VI. What is the effect of the January 4, 2013, D.C. Circuit decision regarding $PM_{2.5}$ implementation under Subpart 4?

*a. Background*

As discussed in Section I of this action, the D.C. Circuit remanded the 1997 $PM_{2.5}$ Implementation Rule to EPA on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428. The court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate matter-specific provisions of subpart 4 of Part D of Title I.

*b. Proposal on This Issue*

In this portion of the proposed redesignation, EPA addresses the effect of the Court's January 4, 2013, ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Rome Area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Rome Area redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ Implementation Rule recently remanded by the Court, the State's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

*c. Applicable Requirements for the Purpose of Evaluating the Redesignation Request*

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating the Georgia's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Rome Area of redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for the plan and Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this

[5] In a September 23, 2013, letter to EPA, the State reaffirmed its commitment to address and correct any violation of the 1997 annual $PM_{2.5}$ NAAQS as expeditiously as practicable, and no later than 24 months from the trigger activation.

interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in already implemented or due at the time of attainment'').[6] In this case, at the time that Georgia submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Rome Area redesignation, the subpart 4 requirements were not due at the time the State submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the DC Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The State submitted its redesignation request on June 21, 2012, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the State's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013 would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[7] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the State of Georgia by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

*d. Subpart 4 Requirements and the Rome Area Redesignation Request*

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Rome Area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Rome Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of

[6] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

[7] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

subpart 4 for purposes of redesignating the Rome Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for $PM_{10}$[8] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Rome Area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to $PM_{10}$, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[9] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[10] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble for the Implementation of title I, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

*Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively[11] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the $PM_{10}$ NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed $PM_{10}$ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet

[8] $PM_{10}$ refers to particles nominally 10 micrometers in diameter or smaller.

[9] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[10] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[11] As explained above, EPA does not believe that the Court's January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 $PM_{2.5}$ standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)d section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

*e. Subpart 4 and Control of $PM_{2.5}$ Precursors*

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for $PM_{10}$ has allowed for control of $PM_{10}$ precursors such as $NO_X$ from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct $PM_{10}$ shall also apply to $PM_{10}$ precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the DC Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and $PM_{10}$. For a $PM_{10}$ nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

*Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Rome Area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a $PM_{10}$ area governed by subpart 4, a precursor is 'presumptively regulated,' '' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Rome Area EPA, believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Rome Area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of $PM_{10}$ precursors.[12] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that: (1) The Rome Area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[13] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Rome Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have

[12] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[13] The Rome area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring the State to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for $PM_{10}$ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[14] Courts have upheld this approach to the requirements of subpart 4 for $PM_{10}$.[15] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Rome Area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Georgia's request for redesignation of the Rome Area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the court as precluding redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS at this time.

In sum, even if Georgia were required to address precursors for the Rome Area under subpart 4 rather than under subpart 1, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

*f. Maintenance Plan and Evaluation of Precursors*

With regard to the redesignation of the Rome Area, in evaluating the effect of the court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the Area has attained the 1997 annual $PM_{2.5}$ standard and that the State has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA proposes to determine that the State's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 $PM_{2.5}$ standard in the Rome Area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by Georgia and supporting information, EPA believes that the maintenance plan for the Rome Area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Rome area are very low, estimated to be less than 1,000 tons per year. *See* Table 7, below. This amount of ammonia emissions appears especially small in comparison to the total amounts of $SO_2$, $NO_X$, and even direct $PM_{2.5}$ emissions from sources in the Area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

Georgia's maintenance plan shows that emissions of $SO_2$ and $NO_X$ are projected to decrease over the maintenance period in the Rome Area by 18,082 tpy and 5,139 tpy, respectively, while direct $PM_{2.5}$ emissions are projected to increase by 152 tpy. *See* Table 6, above. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 1,603 tpy and that ammonia emissions are projected to increase by 85 tpy between 2007 and 2020. Although ammonia emissions are projected to increase slightly between 2007 and 2020, the large decrease in emissions of other precursors in comparison will keep the Area well below the standard. *See* Table 7, below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this overall downward trend would not continue through 2023. Given that the Rome Area is already attaining the 1997 annual $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the overall trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 annual $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the State has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2023, the overall emission reductions projected in $SO_2$ and $NO_X$ would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 annual $PM_{2.5}$ standard during the maintenance period.

In addition, available air quality data and modeling analyses show continued maintenance of the standard during the maintenance period. As noted in section V, above, the Rome Area recorded an annual average $PM_{2.5}$ concentration of 10.6 $\mu g/m^3$ during 2012, the most recent year available with complete, quality-assured and certified ambient air monitoring data. This is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. Moreover, the modeling analysis

[14] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a $PM_{10}$ attainment plan that impose controls on direct $PM_{10}$ and $NO_X$ emissions and did not impose controls on $SO_2$, VOC, or ammonia emissions).

[15] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled design value for the Rome Area is 9.5 $\mu g/m^3$. Given the significant decrease in overall precursor emissions projected through 2023, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2023.

TABLE 7—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE AREA [16]

| Sector | VOC | | | Ammonia | | |
|---|---|---|---|---|---|---|
| | 2007 | 2020 | Net change | 2007 | 2020 | Net change |
| Nonpoint | 1,607.57 | 1,643.06 | 35.49 | 734.23 | 837.46 | 103.23 |
| Nonroad | 772.31 | 430.25 | −342.06 | 0.72 | 0.84 | 0.12 |
| Onroad | 1,971.44 | 672.57 | −1,298.87 | 56.90 | 32.17 | −24.73 |
| Point | 2,208.40 | 2,210.38 | 1.98 | 30.27 | 36.46 | 6.19 |
| Total | 6,559.72 | 4,956.26 | −1,603.46 | 822.12 | 906.93 | 84.81 |

Thus, EPA believes that there is ample justification to conclude that the Rome Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the DC Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA continues to propose approval of the State's maintenance plan and its request to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

**VII. What is EPA's analysis of Georgia's proposed $NO_X$ and $PM_{2.5}$ MVEBs for the Rome area?**

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEB for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, MVEBs must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEBs is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEBs serves as a ceiling on emissions from an area's planned transportation system. The MVEBs concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

After interagency consultation with the transportation partners for the Rome Area, Georgia has elected to develop MVEBs for NOx and $PM_{2.5}$ for the entire nonattainment area. Georgia has developed these MVEBs, as required, for the last year of its maintenance plan, 2023. The MVEBs reflect the total on-road emissions for 2023, plus an allocation from the available NOx and $PM_{2.5}$ safety margin. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NOx and $PM_{2.5}$ MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled, and new emission factor models. The NOx and $PM_{2.5}$ MVEBs for the Rome Area are identified in Table 8, below.

TABLE 8—ROME AREA $PM_{2.5}$ $NO_X$ MVEBS (TPY)

| | $PM_{2.5}$ | $NO_X$ |
|---|---|---|
| 2023 Mobile Emissions | 31.8 | 847 |
| 2023 Safety Margin Allocated | 6.2 | 147.4 |
| 2023 Total Mobile Budget | 38.0 | 994.4 |

In an effort to accommodate future variations in Travel Demand Models (TDM) and the vehicle miles traveled forecast when no change to the network is planned, GA EPD consulted with the interagency consultation group, including U.S. EPA Region 4, to determine a reasonable approach to address this variation. The projected 2023 on-road motor vehicle emissions for direct $PM_{2.5}$ and $NO_X$ are 31.8 and 847 tons, respectively. On-road emissions of $SO_2$ are considered de-minimis (70 FR 24280, 24283, May 6, 2005), therefore, no budget for $SO_2$ is required.

A safety margin is necessary to accommodate the variabilities, or worst-case scenarios that can occur due to future planning assumptions. The worst-case daily motor vehicle emissions projection for $PM_{2.5}$ is 19.5 percent above the projected 2023 on-road emissions. In a worst-case scenario, the needed annual safety margin for the MVEB would be 6.2 tons resulting in an overall MVEB of 38 tons per year. The worst-case daily motor vehicle emissions projection for $NO_X$ is 17.4

[16] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS.

percent above the projected 2023 on-road emissions. In a worst-case scenario, the needed annual safety margin for the MVEB would be 147.4 tons resulting in an overall MVEB of 994.4 tpy.

Through this rulemaking, EPA is proposing to approve the MVEBs for $NO_X$ and $PM_{2.5}$ for 2023 for the Rome Area into the Georgia SIP because EPA has determined that the Area maintains the 1997 annual $PM_{2.5}$ NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Rome Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. In addition, as discussed in Section V above, EPA is proposing that if this approval is finalized in 2014, the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS through at least 2024. After thorough review, EPA is proposing to approve the budgets because they are consistent with maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2023.

## VIII. What is the status of EPA's adequacy determination for the proposed $NO_X$ and $PM_{2.5}$ MVEBs for 2023 for the Rome area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEB, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation conformity purposes, the MVEBs must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEBs are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Georgia's maintenance plan submission includes $NO_X$ and $PM_{2.5}$ MVEBs for the Rome Area for 2023, the last year of the maintenance plan. EPA reviewed the $NO_X$ and $PM_{2.5}$ MVEBs through the adequacy process, and the adequacy of the MVEBs was open for public comment on EPA's adequacy Web site on July 26, 2012, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy for the 2023 MVEBs for the Rome Area closed on August 27, 2012. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2023 MVEBs for the Rome Area for transportation conformity purposes in the near future by completing the adequacy process that was started on July 26, 2012. After EPA finds the 2023 MVEBs adequate or takes final action to approve them into the Georgia's SIP, the new MVEBs for NOx and $PM_{2.5}$ must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2023 or beyond, the applicable budgets will be the new 2023 MVEBs established in the maintenance plan.

## IX. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the $NO_X$ and $PM_{2.5}$ MVEBs for 2023 for the Rome Area

On April 5, 2011, EPA determined that the Rome Area was attaining the 1997 $PM_{2.5}$ NAAQS. *See* 76 FR 18650. EPA is now taking two separate but related actions regarding the Area's redesignation and maintenance of the 1997 annual $PM_{2.5}$ NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of all available data in AQS, that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine that the Rome Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to approve Georgia's redesignation request for the Rome Area.

Second, EPA is proposing to approve the maintenance plan for the Rome Area, including the $PM_{2.5}$ and $NO_X$ MVEBs for 2023 submitted by Georgia into the State's SIP (under section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 1997 annual $PM_{2.5}$ NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for transportation conformity purposes for the $PM_{2.5}$ and $NO_X$ MVEBs for 2023 under 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule approving the MVEBs into the Georgia's SIP, whichever is earlier, the transportation partners will need to demonstrate conformity to the new $NO_X$ and $PM_{2.5}$ MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designation of Rome Area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

## X. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the legal designation of the Rome Area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of GA EPD's request would also incorporate a plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area through 2023 into the Georgia SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 annual $PM_{2.5}$ NAAQS and procedures for evaluation of potential violations. The maintenance plan also includes $NO_X$ and $PM_{2.5}$ MVEBs for the Rome Area. Additionally, EPA is notifying the public of the status of its adequacy determination for the $NO_X$ and $PM_{2.5}$ pursuant to 40 CFR 93.118(f)(1).

## XI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not ''significant regulatory action[s]'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Georgia, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 19, 2013.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

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